

**REMARKS**

Applicants are in receipt of an Office Action dated August 18, 2010. As discussed in a telephone interview with the Examiner, the August 18, 2010 Action is premature, because it does not take into account the request for a suspension of action submitted with the RCE. Indeed, the Office Action dated August 23, 2010 has since vacated the August 18, 2010 Action in view of the suspension of action. Nonetheless, in the interest of expediting prosecution, Applicants respectfully submit that the present amendment fully addresses the rejections raised in the August 18, 2010 Office Action. Favorable reconsideration and allowance of the claims are respectfully requested.

**I. Claim Status and Amendments**

Claims 1-8, 14-17, and 23-45 were pending in this application when last examined. Claims 8, 14-17, and 23-25 have been examined on the merits and stand rejected. Claims 1-7 and 26-45 have been withdrawn. No claims have been allowed.

By way of the present amendment, claims 8 and 17 have been amended so that: (i) "SEQ ID NO: 2" is included, (ii) the SpaA and ΔSpaA proteins are restricted to the five variant peptides, as suggested by the Examiner at page 8 of

the August 18, 2010 Action, and (iii) the phrase "in which a portion of the SpaA protein is deleted" is revised to "in which about 1/3 of the C-terminal of the SpaA protein is deleted". In other words, the claims have been amended to the subject indicated by the Examiner has being supported and enabled by the disclosure. Also, with respect to revision (iii), support can be found in the disclosure at page 25, lines 22-24.

Claims 14-16 and 23-25 have been cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a divisional or continuation application on any cancelled subject matter.

Claims 1-8, 17, and 26-45 are pending upon entry of this amendment. It is respectfully submitted that the examined claims are in condition for allowance for the reasons discussed herein.

## **II. Written Description Rejection**

Starting with item 5 on page 3 of the August 18, 2010 Office Action, the Examiner indicated that claims 8, 14-17 and 23-25 will remain rejected as failing to comply with the written description requirement. The rejection is respectfully traversed. Nonetheless, for the sole purpose of expediting prosecution and not to acquiesce to the rejection,

Applicants have amended the claims in a manner believed to overcome the rejection.

As mentioned above, claims 8 and 17 have been amended to include the SEQ ID NO (SEQ ID NO: 2) in place of identification with a strain and to restrict the SpaA and ΔSpaA proteins to the five variant peptides which the Examiner (at page 8 of the Office Action) indicated are supported by the disclosure. In other words, the claims have been amended to the subject indicated by the Examiner has being supported and enabled by the disclosure. Thus, this amendment renders the rejection moot. Withdrawal of the rejection is in order and is requested.

### **III. Indefiniteness Rejection**

Starting with item 7 on page 21 of the august 18, 2010 Office Action, the Examiner indicated that claims 8, 14-17 and 23-25 remain rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The present amendment obviates this rejection.

As mentioned above, the claims are amended so as to include the amino acid sequence (i.e., SEQ ID NO: 2) of the SpaA protein and to amend the phrase "in which a portion of the SpaA protein is deleted" to "in which about 1/3 of the C-terminal of the SpaA protein is deleted" to thereby render the

rejection moot. Withdrawal of the rejection is in order and is requested.

**IV. Conclusion**

Applicants believe that all issues raised in the Office Action have been fully addressed in a manner that should lead to patentability of the present application. Favorable consideration and allowance are respectfully requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By /jfw/

Jay F. Williams  
Registration No. 48,036

JFW:pp  
Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
G:\BN\A\Aoyb\Ushijima3\Pto\2010-10-14Amendment.doc